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## Jardines, Drugs, and Medieval Scots Law – Miami Vice?

Posted on 11/04/2013 by John Cairns

To most British historians the above heading will seem to allude to the famous trading firm Jardine Matheson (often known as Jardines) and the opium trade in Imperial China, with a puzzling reference to medieval law and an iconic 80s TV programme; but this would be wrong. Joelis Jardines is a Miami man prosecuted for possessing marijuana, whom the US Supreme Court has recently decided had been the subject of an illegal 4th Amendment search. This happened when a policeman, without probable cause, but acting on an anonymous tip-off, went to his house with a drug-detection dog that acted in a way that identified marijuana as likely being in the house. A warrant was then gained, and the marijuana found. Though the name "Jardines" must have the same late (vulgar) Latin root as the Scottish name originating in Annandale, "Jardine", one suspects that Mr Jardines was of Latin-American rather than Scottish extraction.

No matter. What is interesting is that, in a dissenting opinion, Alito, J. has stated that "Dogs' keen sense of smell has been used in law enforcement for centuries. The antiquity of this practice is evidenced by a Scottish law from 1318 that made it a crime to 'disturb a tracking dog or the men coming with it for pursuing thieves or seizing malefactors.' K. Brown et al., *The Records of the Parliaments of Scotland to 1707*, (St Andrews, 2007-2013), online at <http://www.rps.ac.uk/mss/1318/9>." He basically argued that just by turning up at Mr Jardines' door with a dog cannot be an illegal search under the 4th Amendment, and he then added that "If bringing a tracking dog to the front door of a house constituted a trespass one would expect at least one case to have arisen during the past 800 years. The Court has found none." With all respect to the learned judge, given the US 4th Amendment is rather more recent than 1318, medieval procedures rather different, and the modern Scots law on search rather different from the U.S., the matter is never likely to have presented itself in quite this way!

But what is interesting is that a statute of Robert the Bruce's famous "reconstruction" Parliament of 1318 played some part in developing an argument in the US Supreme Court. It shows the advantage of having the Scottish statutes easily accessible on the internet, as one doubts if even the most diligent judge's clerk would have turned this up if it had been necessary to look at volume 1 of the nineteenth-century Acts of the Parliaments of Scotland, or Archie Duncan's volume in the *Regesta regum Scottorum*.

The Latin rubric of the original statute is "Quod nullus perturbet canem tracentem"; substitute "dormientem" and it is wonderfully reminiscent of Hogwarts' motto: "Draco dormiens nunquam titillandus".

This blogger is indebted to his Stirling colleagues, Douglas Brodie and Alastair Mann, for bringing this to his attention.

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